THE HONOURABLE SRI JUSTICE N.V.RAMANA

Writ Petition No.3115 of 2002

Dated:21st February, 2006

Between:

N.Shiva Sankar Das and another.

…..PETITIONER

AND

Principal Secretary F&RD,

A.P. Secretariat, Hyderabad

and another.

….RESPONDENTS

THE HONOURABLE SRI JUSTICE

N.V.RAMANA

W.P.No.3115 of 2002

ORDER:

Petitioners who are the retired employees of the 2nd respondent/A.P. Dairy Development Federation filed this writ petition seeking direction to the respondents to settle their pension benefits in full on monthly *pro rata* basis including other dues.

The brief facts of the case are that the petitioners worked for some time with the 1st respondent and thereafter opted to work with the 2nd respondent/Federation and worked there till their retirement.

The grievance of the petitioners is that the respondents have not settled the pensionary benefits in full on monthly *pro rata* basis including other dues. However, when the matter came up for hearing, it is submitted across the bar by the learned counsel for the petitioners that the respondents except the pensionary benefits in full on monthly *pro rata* basis, they have paid all other dues. He submits that similarly placed persons filed W.P. No.902 of 2001 questioning G.O. Ms. No.81, Animal Husbandry, Dairy Development and Fisheries (Dy.II) Department, dated 13-11-2000 and the verification report of the accountant General issued in Ref.No.17/III/K-31/BF/19/1998/1412 dated 9-11-1998 in deciding the claim for capitalized pension and not paying the monthly pension and not passing pension payment order on *pro rata* basis in terms of G.O. Ms. No. 647, F & R Development Corporation Department dated 16-8-1997, and this Court vide order dated 14-10-2004 allowed the said writ petition setting aside G.O. Ms. No. 81 and the verification report of the Accountant General dated 9-11-1998 and directed the respondents to pass orders afresh keeping in view the total qualifying service of the petitioners therein from the date of their initial temporary appointment till the date of their absorption in the 2nd respondent federation in accordance with the Andhra Pradesh (Revised) Pension Rules, 1980 and G.O. Ms. No. 647 dated 16-8-1977. Aggrieved by the said order the 1st respondent Government therein filed writ appeal in W.A. No. 1715 of 2005, which was dismissed by a Division Bench of this Court vide judgment dated 17.09.2005 directing the respondents to pass appropriate orders in terms of the judgment of the learned Single Judge.

Pursuant to the orders of this Court, the 1st respondent has issued G.O. Ms. No. 49 dated 23-9-2005, canceling its earlier orders in G.O. Ms. No. 81, dated 13-11-2000, and ordered sanction of revised pensionary benefits on lump sum *pro rata* basis. Paragraphs 3 and 4 of G.O. Ms. No. 49, dated 23-9-2005, read as under:

> "3. In the circumstances explained above, Government after careful examination of the case hereby cancel the orders issued in the G.O.Ms.No.81 dated 13-11-2000 and order for sanction of revised pensionary benefits on lump sum prorata basis taking into account the total period he worked in Government service during the period from 10-5-1961 to 31-7-1977 i.e., from his initial temporary appointment till the date of his absorption into the Andhra Pradesh Dairy Development Cooperative Federation Limited.
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> 4. The Managing Director, Andhra Pradesh Dairy Development Cooperative Federation Limited shall send revised pension proposals accordingly for onward transmission to the Accountant General, Andhra Pradesh, Hyderabad."

Thus, the learned counsel for the petitioners relying on the judgment of this Court in W.P. No. 902 of 2001 dated 14-10-2004 and the subsequent G.O. Ms. No. 49, dated 23-9-2005, issued by the Government canceling G.O. Ms. No. 81, dated 13-11-2000, contended that the petitioners herein are also entitled for pension on *pro rata* basis.

The Assistant Secretary to Government (FAC), Animal Husbandry, Dairy Development and Fisheries Department, filed additional counter affidavit. It is stated that the petitioners stand on the same footing as the petitioner in W.P. No. 902 of 2001, which was allowed by this Court vide order dated 14-10-2004. He, however, submitted that the said writ petition was disposed of even without there being a counter filed by the government explaining the facts and circumstances therein.

Learned Government Pleader appearing for the 1st respondent submitted that the petitioners have not exercised their option as per A.P. Revised Pension Rules, 1980 (for short the Rules), and therefore, they are not entitled for grant of pensionary benefits on monthly *pro rata* basis. Rule 4 and 5 of the Rules reads as under:

> 4. The officer will exercise an option, within six months of his absorption, for either of the alternatives indicated below:
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> a. Receiving the monthly Pension and Retirement Gratuity already worked out, under the usual Government arrangements;
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> b. Receiving the gratuity and a lump sum amount in lieu of pension worked out with reference to commutation tables obtaining on the date of superannuation. (or the date of absorption/invalidation or completion of twenty years of qualifying service had the officer continued in Government service, whichever is later)
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> 5. Where no option is exercised within the prescribed period, the officer will automatically be governed by alternative (b) above.

Thus, relying on Rule 5 of the Rules, learned Government Pleader contended that as the petitioners did not exercise their option, they will be governed in terms of 4(b).

Heard the learned counsel for the petitioners as also the respondents and perused the judgment in W.P. No. 902 of 2001, dated 14-11-2004 and the orders passed in G.O.Ms.No.49 dated 23-9-2005.

There is no dispute that the petitioners are similarly placed to that of the petitioner in W.P. No. 902 of 2001, which was allowed by this Court vide orders dated 14-11-2004, and writ appeal filed in W.A. No. 1715 of 2005 assailing the order in the writ petition, was also dismissed by a Division Bench of this Court vide order dated 17.09.2005. This Court by its order passed in the writ petition, admittedly, set aside G.O. Ms. No. 81, dated 13-11-2000. Pursuant to the judgment of this Court, the Government issued G.O. Ms. No. 49, dated 23-09-2005 cancelling G.O. Ms. No. 81, dated 13-11-2000, implying thereby that the petitioners would be governed by the provisions of G.O. Ms. No. 49, dated 23-09-2005. Though the learned Government

Pleader contends that the petitioners having not exercised their option, are not entitled for *pro rata* pension, the fact remains that this Court in W.P. No. 902 of 2001, dated 14-10-2004, had held that even if the petitioner had not exercised his option it was the duty of the employer to obtain the same from the employees. Therefore, it is not open for the respondents to contend that the petitioners having not exercised their option, are not entitled to pension on *pro rata* basis.

In the above view of the matter, the writ petition has to be allowed, and it is accordingly allowed with the following directions:

The respondents are directed to consider the case of the petitioners for sanction of pensionary benefits in the light of the judgment of the learned Single Judge in W.P. No. 902 of 2001 and subsequent orders issued by the Government in G.O. Ms. No.49 dated 23-9-2005 cancelling its earlier G.O. Ms. No. 81, dated 13-11-2000, within a period of three months from the date of receipt of a copy of this order. No costs.

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(N.V. RAMANA, J.)

Date:21st February 2006.

GRK